

Whether shipping and handling charges may be deducted by retailers in calculating Retailers' Occupation Tax liability depends not upon the separate billing of such transportation or handling charges but upon whether the charges are included in the selling prices of the property or are contracted for separately by purchasers and retailers. See 86 Ill. Adm. Code 130.415. (This is a GIL).

March 30, 2001

Dear Xxxxx:

This letter is in response to your letter dated February 23, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

ORGANIZATION, a 501(c)(3) Not-For-Profit organization, headquartered in AAA will hold its annual convention in CITY in May, 2001. At that time they will sell some books that are of interest to garden club members in attendance. We understand that we must charge sales tax on these books.

I have looked at your information on-line, but could not find specific answers to the following questions:

- 1) What tax rate should be used?
- 2) What forms are necessary to report the sales tax to your department?
- 3) If orders are taken at the convention to be shipped from the CITY headquarters at a later date must sales tax be charged?
 - a) If sales tax is charged on these orders is tax due on the cost of shipping?
- 4) When and where should the tax forms be filed?

Thank you for your assistance.

For the following reasons, your sales of books in CITY will constitute retail sales and you will be acting as an Illinois retailer. You should obtain a certificate of registration under the Retailers' Occupation Tax Act and collect and remit sales tax based upon your gross receipts. The total sales tax rate for CITY sales is 8.75%. You may contact our Central Registration Office at (217) 785-3707 to obtain forms and information about collecting and filing the tax on your sales.

An "Illinois Retailer" is one who either accepts purchase orders for tangible personal property in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax (sales tax) on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers. If an organization attends an annual convention or show for a few days, and accepts purchase orders at that show, it would be making Illinois retail sales subject to Retailers' Occupation Tax. This would be true even if the organization later ships the goods from an out-of-State location, such as AAA, to the Illinois customers.

As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always includable in gross charges subject to tax. See 86 Ill. Adm. Code 130.410. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both separately contracted for and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the excess charges are subject to tax. As indicated above, charges termed "delivery" or "transportation" charges follow the same principle.

Whether shipping and handling charges may be deducted by retailers in calculating Retailers' Occupation Tax liability depends not upon the separate billing of such transportation or handling charges but upon whether the charges are included in the selling prices of the property or are contracted for separately by purchasers and retailers. The best evidence that shipping charges were agreed to separately and apart from selling prices, are separate and distinct contracts for freight or shipping. Alternatively, documentation in the records of sellers that purchasers had options of taking delivery of the property at sellers' locations, for the agreed purchase prices, or having delivery made by sellers for the agreed purchase prices plus ascertainable delivery charges, may suffice. See 86 Ill. Adm. Code 130.415.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.